

AMENDED IN ASSEMBLY FEBRUARY 14, 2009

CALIFORNIA LEGISLATURE—2009–10 THIRD EXTRAORDINARY SESSION

SENATE BILL

No. 9

Introduced by Senator Ducheny

January 5, 2009

An act relating to the Budget Act of 2008. An act to amend Sections 130105 and 130150 of the Health and Safety Code, to amend Section 30131.4 of, and to add Section 30131.45 to, the Revenue and Taxation Code, relating to children, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 9, as amended, Ducheny. ~~Budget Act of 2008. Proposition 10:~~ *use of funds: services for children.*

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2008.~~

The California Children and Families Act of 1998, an initiative measure approved by the voters as Proposition 10 at the November 3, 1998, statewide general election, requires that the California Children and Families Program, established by the act, be funded by certain taxes imposed on the sale and distribution of cigarettes and tobacco products, that revenues be deposited into the California Children and Families Trust Fund, and that the fund be used for the implementation of comprehensive early childhood development and smoking prevention programs. Existing law provides that prescribed percentages of moneys allocated and appropriated from the trust fund shall be deposited in various accounts, including the Mass Media Communications Account and the Unallocated Account, for expenditure by the California Children

and Families Commission, also known as First 5 California, for various subjects relating to, and furthering the goals and purposes of, the act.

Existing law prohibits amendment of this initiative measure by the Legislature unless the amendment is approved by the voters, or the amendment is accomplished by a vote of ²/₃ of the membership of both houses of the Legislature and the amendment furthers the act and is consistent with its purposes.

Existing law establishes various public programs to provide health care coverage and social services to children.

This bill, subject to voter approval at the next statewide election, would revise certain provisions of the California Children and Families Act of 1998, to require designated unencumbered and unexpended funds in the California Children and Families Trust Fund to be redirected to support state health and human services programs, as described, for children up to 5 years of age. The bill, subject to voter approval, would eliminate the Mass Media Communications Account in the trust fund, and would reallocate the percentage payable to that account to the Unallocated Account. The bill, subject to voter approval, would require, prior to the distribution of moneys from the fund, that \$268,000,000 be transferred annually, in specified fiscal years, to the Proposition 10 Health and Human Services Fund, which would be created by the bill. The bill would require these funds to be expended, upon appropriation by the Legislature, to support state health and human services programs, as described.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 19, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 19, 2008, pursuant to the California Constitution.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~²/₃. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 130105 of the Health and Safety Code is*
2 *amended to read:*

3 130105. The California Children and Families Trust Fund is
4 hereby created in the State Treasury.

5 (a) The California Children and Families Trust Fund shall
6 consist of moneys collected pursuant to the taxes imposed by
7 Section 30131.2 of the Revenue and Taxation Code.

8 (b) All costs to implement this act shall be paid from moneys
9 deposited in the California Children and Families Trust Fund.

10 (c) The State Board of Equalization shall determine within one
11 year of the passage of this act the effect that additional taxes
12 imposed on cigarettes and tobacco products by this act has on the
13 consumption of cigarettes and tobacco products in this state. To
14 the extent that a decrease in consumption is determined by the
15 State Board of Equalization to be the direct result of additional
16 taxes imposed by this act, the State Board of Equalization shall
17 determine the fiscal effect the decrease in consumption has on the
18 funding of any Proposition 99 (the Tobacco Tax and Health
19 Protection Act of 1988) state health-related education or research
20 programs in effect as of November 1, 1998, and the Breast Cancer
21 Fund programs that are funded by excise taxes on cigarettes and
22 tobacco products. Funds shall be transferred from the California
23 Children and Families Trust Fund to those affected programs as
24 necessary to offset the revenue decrease directly resulting from
25 the imposition of additional taxes by this act. These reimbursements
26 shall occur, and at any times, as determined necessary to further
27 the intent of this subdivision.

28 (d) *The California Children and Families Trust Fund shall be*
29 *used to provide direct health care services, human services,*
30 *including services for at-risk families who are involved with the*
31 *child welfare system administered by the county welfare*
32 *department, and direct early education services, including*
33 *preschool and child care. Moneys shall be allocated and*
34 *appropriated from the California Children and Families Trust Fund,*
35 *except as authorized in subparagraph (H) of paragraph (1), and*
36 *Section 30131.45 of the Revenue and Taxation Code, as follows:*

(1) Twenty percent shall be allocated and appropriated to separate accounts of the state commission for expenditure according to the following formula:

~~(A) Six percent shall be deposited in a Mass Media Communications Account for expenditures for communications to the general public utilizing television, radio, newspapers, and other mass media on subjects relating to and furthering the goals and purposes of this act, including, but not limited to, methods of nurturing and parenting that encourage proper childhood development, the informed selection of child care, information regarding health and social services, the prevention and cessation of tobacco, alcohol, and drug use by pregnant women, the detrimental effects of secondhand smoke on early childhood development, and to ensure that children are ready to enter school.~~

~~(B)~~

(A) Five percent shall be deposited in an Education Account for expenditures to ensure that children are ready to enter school and for programs relating to education, including, but not limited to, the development of educational materials, professional and parental education and training, and technical support for county commissions in the areas described in subparagraph (A) of paragraph (1) of subdivision (b) of Section 130125.

~~(C)~~

(B) Three percent shall be deposited in a Child Care Account for expenditures to ensure that children are ready to enter school and for programs relating to child care, including, but not limited to, the education and training of child care providers, the development of educational materials and guidelines for child care workers, and other areas described in subparagraph (B) of paragraph (1) of subdivision (b) of Section 130125.

~~(D)~~

(C) Three percent shall be deposited in a Research and Development Account for expenditures to ensure that children are ready to enter school and for the research and development of best practices and standards for all programs and services relating to early childhood development established pursuant to this act, and for the assessment and quality evaluation of those programs and services.

~~(E)~~

1 (D) One percent shall be deposited in an Administration Account
2 for expenditures for the administrative functions of the state
3 commission. Any funds not needed for the administrative functions
4 of the state commission may be transferred to the Unallocated
5 Account described in subparagraph ~~(F)~~ (E), upon approval by the
6 state commission.

7 ~~(F) Two~~

8 (E) Eight percent shall be deposited in an Unallocated Account
9 for expenditure by the state commission for any of the purposes
10 of this act described in Section 130100 provided that none of these
11 moneys shall be expended for the administrative functions of the
12 state commission. *The Unallocated Account shall be used to ensure*
13 *that every county commission has a base level of funding of at*
14 *least four hundred thousand dollars (\$400,000).*

15 ~~(G)~~

16 (F) In the event that, for whatever reason, the expenditure of
17 any moneys allocated and appropriated for the purposes specified
18 in subparagraphs (A) to ~~(F)~~ (E), inclusive, is enjoined by a final
19 judgment of a court of competent jurisdiction, then those moneys
20 shall be available for expenditure by the state commission for mass
21 media communication emphasizing the need to eliminate smoking
22 and other tobacco use by pregnant women, the need to eliminate
23 smoking and other tobacco use by persons under 18 years of age,
24 and the need to eliminate exposure to secondhand smoke.

25 ~~(H)~~

26 (G) Any moneys allocated and appropriated to any of the
27 accounts described in subparagraphs (A) to ~~(F)~~ (E), inclusive, that
28 are not encumbered or expended within any applicable period
29 prescribed by law shall (together with the accrued interest on the
30 amount) revert to and remain in the same account for the next
31 fiscal period.

32 (H) *Notwithstanding subparagraph (G), balances of at least*
33 *three hundred forty million dollars (\$340,000,000) in the accounts*
34 *described in subparagraphs (A) to (E), inclusive, that are not*
35 *encumbered or expended by July 1, 2009, shall be redirected to*
36 *support state health and human services programs for children*
37 *up to five years of age. The state commission shall ensure that*
38 *these reserves are available for this purpose. For purposes of this*
39 *subparagraph, “state health and human services programs”*
40 *includes, but is not limited to, early intervention and prevention*

1 *services for infants and toddlers with developmental disabilities,*
2 *child welfare services, adoption assistance, foster care, kinship*
3 *guardianship assistance payments (Kin-GAP), and direct health*
4 *care services.*

5 (2) Eighty percent shall be allocated and appropriated to county
6 commissions in accordance with Section 130140.

7 (A) The moneys allocated and appropriated to county
8 commissions shall be deposited in each local Children and Families
9 Trust Fund administered by each county commission, and shall
10 be expended only for the purposes authorized by this act and in
11 accordance with the county strategic plan approved by each county
12 commission. *Notwithstanding any other provision of law and the*
13 *designation of the local Children and Families Trust Fund as a*
14 *trust fund, the local controller may use the money in the fund for*
15 *loans to the local general fund. Any such loan shall be repaid from*
16 *the general fund with interest computed at the Pooled Money*
17 *Investment Account rate, with the interest commencing to accrue*
18 *on the date the loan is made from the fund or account. This*
19 *subparagraph does not authorize any transfer that will interfere*
20 *with the carrying out of the object for which this fund or those*
21 *accounts were created.*

22 (B) Any moneys allocated and appropriated to any of the county
23 commissions that are not encumbered or expended within any
24 applicable period prescribed by law shall (together with the accrued
25 interest on the amount) revert to and remain in the same local
26 Children and Families Trust Fund for the next fiscal period under
27 the same conditions as set forth in subparagraph (A).

28 (e) All grants, gifts, or bequests of money made to or for the
29 benefit of the state commission from public or private sources to
30 be used for early childhood development programs shall be
31 deposited in the California Children and Families Trust Fund and
32 expended for the specific purpose for which the grant, gift, or
33 bequest was made. The amount of any such grant, gift, or bequest
34 shall not be considered in computing the amount allocated and
35 appropriated to the state commission pursuant to paragraph (1) of
36 subdivision (d).

37 (f) All grants, gifts, or bequests of money made to or for the
38 benefit of any county commission from public or private sources
39 to be used for early childhood development programs shall be
40 deposited in the local Children and Families Trust Fund and

1 expended for the specific purpose for which the grant, gift, or
2 bequest was made. The amount of any such grant, gift, or bequest
3 shall not be considered in computing the amount allocated and
4 appropriated to the county commissions pursuant to paragraph (2)
5 of subdivision (d).

6 *SEC. 2. Section 130150 of the Health and Safety Code is*
7 *amended to read:*

8 130150. (a) (1) On or before October 15 of each year, each
9 county commission shall conduct an audit of, and issue a written
10 report on the implementation and performance of, its functions
11 during the preceding fiscal year, including, at a minimum, the
12 manner in which funds were expended, the progress toward, and
13 the achievement of, program goals and objectives, and information
14 on programs funded and populations served for all funded
15 programs.

16 On or before November 1 of each year, each county commission
17 shall submit its audit and report to the state commission for
18 inclusion in the state commission's consolidated report required
19 in subdivision (b). Each commission shall submit its report in a
20 format prescribed by the state commission if the state commission
21 approves that format in a public meeting prior to the fiscal year
22 during which it is to be used by the county commissions. The state
23 commission shall develop the format in consultation with the
24 county commissions.

25 (2) *The audits and reports of each county commission shall be*
26 *transmitted to its respective board of supervisors, the county*
27 *auditor, and to the state commission. The county auditor shall*
28 *serve on the local county commission in an ex-officio capacity.*

29 (b) The state commission shall, on or before January 31 of each
30 year, do both of the following:

31 (1) Conduct an audit and prepare a written report on the
32 implementation and performance of the state commission functions
33 during the preceding fiscal year, including, at a minimum, the
34 manner in which funds were expended and the progress toward,
35 and the achievement of, program goals and objectives.

36 (2) Prepare a written report that consolidates, summarizes,
37 analyzes, and comments on the annual audits and reports submitted
38 by all of the county commissions and the Controller for the
39 preceding fiscal year. The written report shall include a listing, by
40 category, of the aggregate expenditures on program areas funded

1 by the state and county commissions pursuant to the purposes of
2 this act, according to a format prescribed by the state commission.
3 This report by the state commission shall be transmitted to the
4 Governor, the Legislature, and each county commission.

5 (3) In the event a county commission does not submit the
6 information prescribed in subdivision (a), the state commission
7 may withhold funds that would otherwise have been allocated to
8 the county commission from the California Children and Families
9 Trust Fund pursuant to Section 130140 until the county commission
10 submits the data as required by subdivision (a).

11 (c) The state commission shall make copies of each of its annual
12 audits and reports available to members of the general public on
13 request and at no cost. The state commission shall furnish each
14 county commission with copies of those documents in a number
15 sufficient for local distribution by the county commission to
16 members of the general public on request and at no cost.

17 (d) Each county commission shall make copies of its annual
18 audits and reports available to members of the general public on
19 request and at no cost.

20 *SEC. 3. Section 30131.4 of the Revenue and Taxation Code is*
21 *amended to read:*

22 30131.4. (a) All moneys raised pursuant to taxes imposed by
23 Section 30131.2 shall be appropriated and expended only for the
24 purposes expressed in the California Children and Families Act,
25 and shall be used only to supplement existing levels of service and
26 not to fund existing levels of service, *except as authorized in*
27 *subparagraph (H) of paragraph (1) of subdivision (d) of Section*
28 *130105 of the Health and Safety Code and Section 30131.45.* No
29 moneys in the California Children and Families Trust Fund shall
30 be used to supplant state or local General Fund money for any
31 purpose.

32 (b) Notwithstanding any other provision of law and the
33 designation of the California Children and Families Trust Fund as
34 a trust fund, the Controller may use the money raised pursuant to
35 Section 30131.2 for the California Children and Families Trust
36 Fund and all accounts created pursuant to subdivision (d) of Section
37 130105 of the Health and Safety Code *and Section 30131.45* for
38 loans to the General Fund as provided in Sections 16310 and 16381
39 of the Government Code. Any such loan shall be repaid from the
40 General Fund with interest computed at 110 percent of the Pooled

1 Money Investment Account rate, with the interest commencing to
2 accrue on the date the loan is made from the fund or account. This
3 subdivision does not authorize any transfer that will interfere with
4 the carrying out of the object for which this fund or those accounts
5 were created.

6 *SEC. 4. Section 30131.45 is added to the Revenue and Taxation*
7 *Code, to read:*

8 *30131.45. Prior to the distribution of moneys from the*
9 *California Children and Families Trust Fund as provided under*
10 *Section 130105 of the Health and Safety Code, for state fiscal*
11 *years 2009–10, 2010–11, 2011–12, 2012–13, and 2013–14, two*
12 *hundred sixty-eight million dollars (\$268,000,000) shall be*
13 *transferred annually to the Proposition 10 Health and Human*
14 *Services Fund, which is hereby created in the State Treasury, to*
15 *support state health and human services programs for children*
16 *up to five years of age. These funds shall be expended, upon*
17 *appropriation by the Legislature, as part of the annual budget*
18 *process or in another statute. For purposes of this section, “state*
19 *health and human services programs” includes, but is not limited*
20 *to, early intervention and prevention services for infants and*
21 *toddlers with developmental disabilities, child welfare services,*
22 *adoption assistance, foster care, kinship guardianship assistance*
23 *payments (Kin-GAP), and direct health care services.*

24 *SEC. 5. As an amendment of an initiative statute, Sections 1*
25 *to 4, inclusive, of this act shall become effective only upon approval*
26 *by the voters at a statewide election.*

27 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~
28 ~~changes relating to the Budget Act of 2008.~~

29 ~~SEC. 2.~~

30 *SEC. 6. This act addresses the fiscal emergency declared by*
31 *the Governor by proclamation on December 19, 2008, pursuant*
32 *to subdivision (f) of Section 10 of Article IV of the California*
33 *Constitution.*

34 *SEC. 7. This act is an urgency statute necessary for the*
35 *immediate preservation of the public peace, health, or safety within*
36 *the meaning of Article IV of the Constitution and shall go into*
37 *immediate effect. The facts constituting the necessity are:*

- 1 *In order for amendments to Proposition 10 to be placed on the*
- 2 *ballot for approval by the voters on the earliest possible date, it*
- 3 *is necessary for this act to take effect immediately.*

O